

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Multicultural Radio Broadcasting, Inc.	)	File Number: EB-06-SF-276
	)	
Antenna Structure Registrant	)	NAL/Acct. No.: 200732960001
ASR No. 1013937	)	FRN: 0005086368
Cutler, California	)	

**FORFEITURE ORDER**

**Adopted: June 11, 2007**

**Released: June 13, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Multicultural Radio Broadcasting, Inc. (“Multicultural”), owner of antenna structure #1013937 near Cutler, California, for repeatedly violating Section 303(q) of the Communications Act of 1934, as amended, (“Act”),<sup>1</sup> and Section 17.51 of the Commission’s Rules (“Rules”).<sup>2</sup> On December 22, 2006, the Enforcement Bureau’s San Francisco Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to Multicultural for failing to exhibit the structure’s red obstruction lighting from sunset to sunrise.<sup>3</sup> In this *Order*, we consider Multicultural’s argument that the forfeiture amount be reduced because of Multicultural’s good faith efforts to comply with the Commission’s Rules.

**II. BACKGROUND**

2. Antenna structure #1013937 is an antenna tower of 90.6 meters (297 feet) in height above ground. It is tower four in a four-tower array used by KWRU(AM) to serve Fresno, California.<sup>4</sup> According to the antenna structure registration (“ASR”) for antenna structure #1013937, the structure is required to have painting and lighting in accordance with specific paragraphs of the Commission’s “Obstruction Marking and Lighting Specifications for Antenna Structures – FCC Form 715” (“FCC Form 715”).<sup>5</sup> Specifically, the structure is required to be painted,<sup>6</sup> and have, at its top, a flashing beacon equipped with two lamps and red filters,<sup>7</sup> along with at least two lamps enclosed in red obstruction light

<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. § 17.51.

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732960001 (Enf. Bur., Western Region, San Francisco Office, released December 22, 2006).

<sup>4</sup> Multicultural Radio Broadcasting Licensee LLC, is the licensee of KWRU(AM).

<sup>5</sup> FCC Form 715, Paragraphs 1, 3, 12, and 21.

<sup>6</sup> FCC Form 715, Paragraph 1.

<sup>7</sup> FCC Form 715, Paragraph 3.

globes located on levels at approximately two-thirds and one-third of the overall height of the tower.<sup>8</sup> The lights on antenna structure #1013937 are required to burn continuously or be controlled by a light sensitive device.<sup>9</sup>

3. On October 4, 2006, the Enforcement Bureau's San Francisco Office received a complaint that antenna structure #1013937, located near Cutler, California was not lighted. An agent from the San Francisco Office contacted the Federal Aviation Administration's ("FAA's") Rancho Murrieta Flight Service Station ("FSS") in Rancho Cordova, California.<sup>10</sup> The FSS issued a 15 day Notice to Airmen ("NOTAM") and informed the San Francisco agent that no prior light outage report had been made for antenna structure #1013937. The San Francisco agent then contacted the Tulare County, California, Sheriff's Department and requested that a deputy drive by antenna structure #1013937 that evening to determine if the antenna array lights were extinguished. The Sheriff's Department dispatcher contacted the San Francisco agent at approximately 7:30 p.m. PDT on October 4, 2006, and reported that the lights on antenna structure #1013937 were extinguished.

4. On October 5, 2006, the San Francisco agent drove to the Cutler, California, area and inspected antenna structure #1013937. During the evening of October 5, 2006, the agent observed that the nighttime red obstruction lights for the antenna structure were not functioning.

5. On October 6, 2006 the agent went to the studio location for KWRU(AM) in Fresno, California, and discussed the tower lighting problem with the staff of Multicultural. The agent examined the records and found no prior log entries concerning any lighting outages on antenna structure #1013937. The KWRU(AM) engineer indicated to the agent that the outage may have been caused by a transformer failure.

6. On December 22, 2006, the San Francisco Office issued a *NAL* in the amount of \$10,000 to Multicultural, finding that Multicultural apparently repeatedly failed to exhibit antenna structure #1013937's red obstruction lighting from sunset to sunrise. Multicultural filed a response ("*Response*") on January 23, 2007, arguing that the forfeiture amount should be reduced based on Multicultural's good faith efforts to comply with the Rules.

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>11</sup> Section 1.80 of the Rules,<sup>12</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").<sup>13</sup> In examining Multicultural's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>14</sup>

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<sup>8</sup> FCC Form 715, Paragraph 12.

<sup>9</sup> FCC Form 715, Paragraph 21.

<sup>10</sup> See 47 C.F.R. § 17.48.

<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

8. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.<sup>15</sup> Section 17.51 of the Rules states that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified.<sup>16</sup> According to its ASR, antenna structure #1013937 is required to have, at its top, a flashing beacon equipped with two lamps and red filters,<sup>17</sup> along with at least two lamps enclosed in red obstruction light globes located on levels at approximately two-thirds and one-third of the overall height of the tower.<sup>18</sup> On October 4, 2006, the Tulare County, California, Sheriff's Department observed that the red obstruction lighting on antenna structure #1013937 was not functioning. The next evening, on October 5, 2006, a San Francisco agent also observed that the red obstruction lighting on antenna structure #1013937 was not functioning.

9. Multicultural does not dispute the facts as described in the *NAL*, but does request that we consider a reduction in the proposed forfeiture amount. Multicultural states that "[a]t the time of the agent's visit, October 4 – 5, 2006, the present tower light monitoring system was in the process of being installed but was not yet operational. . . . The outage in question resulted from an electrical failure at the base of tower 4 [of the KWRU array]. A transformer that supplies power for tower lighting had failed and was being replaced . . . which occurred a few days later." To support its statement, Multicultural includes an invoice for the replacement work, dated October 31, 2006. Multicultural also submits an email, dated October 13, 2006, from its contractor detailing the completed work that was done to replace the tower light monitoring system. Multicultural also notes that Section 17.56 of the Rules<sup>19</sup> states that replacing or repairing lights shall be accomplished "as soon as practicable" and that antenna structure #1013937 is located in a remote area. Multicultural acknowledges, however, that it failed to notify the FAA of the tower light outage as required by Section 17.48 of the Rules.<sup>20</sup>

10. Reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.<sup>21</sup> While Multicultural has produced evidence that both its tower light monitoring system and the extinguished light itself have been repaired, it has produced no evidence that Multicultural initiated repairs prior to the October 6, 2006, inspection by the San Francisco agent, who notified the Multicultural staff of the light outage on antenna structure #1013937. Therefore, we cannot conclude that Multicultural's efforts to comply occurred prior to a Commission inspection and, consequently, we decline to reduce the forfeiture amount on that basis. Additionally, while the language of Section 17.56 of the Rules states that lights must be repaired or replaced "as soon as practicable," this language does not exempt antenna structure registrants from monitoring the lights on their antenna structures<sup>22</sup> so that no public safety hazards are created by extinguished lights nor does it exempt antenna structure registrants from the obligation to provide notice to the FAA when required lights are extinguished. Multicultural acknowledges no notice was given to the FAA FSS by Multicultural, as required by Section 17.48 of the Rules. Had Multicultural complied with Section 17.48 of the Rules and

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<sup>15</sup> 47 U.S.C. § 303(q).

<sup>16</sup> 47 C.F.R. § 17.51.

<sup>17</sup> FCC Form 715, Paragraph 3.

<sup>18</sup> FCC Form 715, Paragraph 12.

<sup>19</sup> 47 C.F.R. § 17.56.

<sup>20</sup> See 47 C.F.R. § 17.48.

<sup>21</sup> See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

<sup>22</sup> See 47 C.F.R. § 17.47.

timely notified the FAA FSS of the hazard created by the light outage on antenna structure #1013937, we would be more inclined to agree that Section 17.56 of the Rules allowed Multicultural some time to repair the lights on the structure. Because Multicultural failed to comply with the important public safety mandate found in Section 17.48 of the Rules, we find that Section 17.56 of the Rules offers Multicultural no protection or exemption from a finding that it failed to exhibit antenna structure #1013937's red obstruction lighting from sunset to sunrise, in violation of Section 17.51 of the Rules.

11. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that no reduction of the proposed forfeiture is warranted.

#### IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Multicultural Radio Broadcasting, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for repeatedly violating Section 303(q) of the Act and Section 17.51 of the Rules.<sup>23</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>24</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>25</sup>

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Multicultural Radio Broadcasting, Inc., at its address of record, and Mark Lipp, Esquire, Wiley, Rein and Fielding, its counsel of record.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

<sup>23</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.51.

<sup>24</sup> 47 U.S.C. § 504(a).

<sup>25</sup> See 47 C.F.R. § 1.1914.